IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 421

D. C. HALL COMPANY,

Petitioner,

vs.

THE HIGHWAY COMMISSION OF TEXAS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILL WILSON
Attorney General of Texas

C. K. RICHARDS
Assistant Attorney General of Texas
Capitol Station
Austin 11, Texas

Attorneys for Respondent,
State Highway Commission of Texas

SUBJECT INDEX

	Page
OPINION OF THE COURT BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
ARGUMENT	2,7
(1) The construction and interpretation by the State courts of Texas of the Texas Highway Vehicle License Statute, Article 6675a, V.T.C.S., as applied to the Reciprocity Agreement between the States of Texas and Mississippi does not violate Article I, Section 8, Clause 3 (the commerce clause) of the Constitution of the United States	3,5
(2) Since the reciprocal agreement between the States of Texas and Mississippi is not a compact or treaty comprehended by Article I, Section 10, Clause 3 of the Constitution of the United States, no Federal question is presented	5,7
CONCLUSION	7,8
CERTIFICATE OF SERVICE	8

INDEX OF AUTHORITIES

Cases Cited	Page
Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana, 332 U.S. 495	4
Aero Mayflower Transit Co. v. Georgia, Commission, 295 U.S. 285	4
Atkins v. State Highway Department, 201 S.W. 226	4
Bode v. Barrett, 412 Ill. 204, 106 N.E.2d 521	6
Bode v. Barrett, 344 U. S. 583	4,5,6
Clark v. Paul Gray, Inc., 306 U.S. 583	4
County of Harris v. Sheppard, 156 Tex. 18, 291 S.W. 2d 721	4
Dixie Wholesale Grocery, Inc. v. Martin, 278 Ky. 705, 129 S.W.2d 373	6
Duncan v. Smith, 262 S.W.2d 278	6
Hendrick v. Maryland, 235 U.S. 610	4,5
Kane v. New Jersey, 242 U.S. 160	5
Michigan-Wisconsin Pipeline Co. v. Calvert, 347 U.S. 157	5
Morf v. Bingaman, 298 U.S. 407	4
Payne v. Massey, 145 Tex. 237, 196 S.W.2d 493	4
Railway Express Agency v. Virginia, 347 U.S. 359	5
Spector Motor Service v. O'Conner, 340 U.S. 602	5
State v. Lauridsen, 312 S.W.2d 140	6
Storaasli v. Minnesota, 283 U.S. 57	5
Virginia v. Tennessee, 148 U.S. 518	6

CONSTITUTION AND STATUTES CITED

	Page
Article I, Sec. 8, Clause 3, Constitution of the United States	2,5,6
Article I, Sec. 10, Clause 3, Constitution of the United States	2,3
Fourteenth Amendment to the Constitution of the United States, the due process and equal protection clauses	2
Article 6675a, Sec. 1, V.T.C.S.	2
Article 6675, Sec. 2, V.T.C.S.	2,3
Article 6675a, Sec. 16, V.T.C.S.	2,6,7

INDEX OF AUTHORITIES

Cases Cited	Page
Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana, 332 U.S. 495	4
Aero Mayflower Transit Co. v. Georgia, Commission, 295 U.S. 285	4
Atkins v. State Highway Department, 201 S.W. 226	4
Bode v. Barrett, 412 Ill. 204. 106 N.E.2d 521	6
Bode v. Barrett, 344 U. S. 583	4,5,6
Clark v. Paul Gray, Inc., 306 U.S. 583	4
County of Harris v. Sheppard, 156 Tex. 18, 291 S.W. 2d 721	4
Dixie Wholesale Grocery, Inc. v. Martin, 278 Ky. 705, 129 S.W.2d 373	6
Duncan v. Smith, 262 S.W.2d 278	6
Hendrick v. Maryland, 235 U.S. 610	4,5
Kane v. New Jersey, 242 U.S. 160	5
Michigan-Wisconsin Pipeline Co. v. Calvert, 347 U.S. 157	5
Morf v. Bingaman, 298 U.S. 407	4
Payne v. Massey, 145 Tex. 237, 196 S.W.2d 493	4
Railway Express Agency v. Virginia, 347 U.S. 359	5
Spector Motor Service v. O'Conner, 340 U.S. 602	5
State v. Lauridsen, 312 S.W.2d 140	6
Storaasli v. Minnesota, 283 U.S. 57	5
Virginia v. Tennessee, 148 U.S. 518	6

CONSTITUTION AND STATUTES CITED

	Page
Article I, Sec. 8, Clause 3, Constitution of the United States	2,5,6
Article I, Sec. 10, Clause 3, Constitution of the United States	2,3
Fourteenth Amendment to the Constitution of the United States, the due process and equal protection clauses	2
Article 6675a, Sec. 1, V.T.C.S.	2
Article 6675, Sec. 2, V.T.C.S.	2,3
Article 6675a, Sec. 16, V.T.C.S.	2,6,7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 421

D. C. HALL COMPANY,
Petitioner,

vs.

STATE HIGHWAY COMMISSION OF TEXAS,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondent, State Highway Commission of Texas, respectfully files this Brief in Opposition to the Petition for Writ of Certiorari.

OPINION OF THE COURT BELOW

The opinion of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas (reported in 330 S.W.2d 904), the review of which is sought herein, appears as Appendix "A", pages 36-49 of the Petition for Writ of Certiorari.

JURISDICTION

Petitioner, having exhausted all of its remedies in the courts of Texas, seeks to invoke jurisdiction of this Court under 28 U.S.C. 1257(3). Respondent contends that there are no special or important reasons presented herein for granting the writ of certiorari by this Court under Rule 19(1)(a), Supreme Court Rules.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 10, Clause 3 of the Constitution of the United States, the *compact* clause;

Article I, Section 8, Clause 3 of the Constitution of the United States, the *commerce* clause;

Fourteenth Amendment to the Constitution of the United States, the *due process* and *equal protection* clauses;

Article 6675a, Sections 1, 2, and 16, Vernon's Texas Civil Statutes (Appendix "B", Petition for Writ of Certiorari, pp. 50-56).

STATEMENT OF THE CASE

Respondent adopts the statement of the case in the opinion of the court below (Appendix "A", Petition for Writ of Ceritorari, pp. 36-37).

ARGUMENT

Respondent urges that there is no substantial Federal question presented for review or determi-

nation by this Court in the Petition for Certiorari (pp. 2-4), which has not already been determined heretofore by this Court or which has not been heretofore decided in accordance with the applicable decisions of this Court.

(1) The construction and interpretation by the State courts of Texas of the Texas Highway Vehicle License Statute, Article 6675a, V.T.C.S., as applied to the Reciprocity Agreement between the States of Texas and Mississippi does not violate Article I, Section 8, Clause 3 (the commerce clause) of the Constitution of the United States.

Petitioner contends that since the highway vehicle license fee imposed by Article 6675a-2, Vernon's Texas Civil Statutes, is, in law, an occupation tax, it constitutes a direct burden upon interstate commerce prohibited by the commerce clause of the Federal Constitution and, as such, would result in multiple taxation of the privilege of doing an exclusively interstate transportation business by motor vehicle, also prohibited by the commerce clause of the Federal Constitution. Petitioner erroneously assumes that the highway vehicle license or registration fee is, in law, an occupation tax.

The registration of motor vehicles operated over the highways of Texas, whether such operation is in interstate or intrastate commerce, and the payment of the fees for such registration under the provisions of Article 6675a-2, V.T.C.S., is a privilege tax in the nature of a license or toll for the

use of the highways of Texas, *Payne v. Massey*, 145 Tex. 237, 196 S.W.2d 493, 495 (1946); *County of Harris v. Sheppard*, 156 Tex. 18, 291 S.W.2d 721, 726 (1956), and is not a tax upon the occupation or business of transportation by motor vehicle for hire for the purpose of raising revenue, but is a license fee under police regulation governing the use of the public highways of Texas, *Atkins v. State Highway Department*, 201 S.W. 226, 229 (Tex. Civ. App. 1918).

This Court has uniformly held that a State may levy a fair and reasonable non-discriminatory tax or license fee as compensation for the use of its highways upon motor vehicles engaged exclusively in interstate commerce or upon their owners or operators, *Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U.S. 495, 503; *Bode v. Barrett*, 344 U.S. 583, 585.[1]

Petitioner's contention that the reciprocal agreement between the States of Texas nad Mississippi has substituted the fuel tax for the registration or license fee as provided in Section VII of the reciprocal agreement (Appendix "C", p. 61), has already been decided adversely to petitioner in *Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U.S. at page 502.

---

[1] *Hendrick v. Maryland*, 235 U.S. 610; *Aero Mayflower Transit Co. v. Georgia Commission*, 295 U.S. 285; *Morf v. Bingaman*, 298 U.S. 407; and *Clark v. Paul Gray, Inc.*, 306 U. S. 583.

Prior decisions of this Court have consistently held that the police power of a State to regulate the use of motor vehicles upon its highways extends to non-residents, and that it may prohibit the use of its highways for a foreign motor vehicle unless and until it is licensed in accordance with its laws, and because the privilege or license tax or fee applies equally to residents and non-residents, it is not discriminatory. *Hendrick v. Maryland*, 235 U.S. 610, *Kane v. New Jersey*, 242 U.S. 160; *Storaasli v. Minnesota*, 283 U.S. 57; *Bode v. Barrett*, 344 U.S. 583, 586. Since the incidence of the tax is not directed to the occupation or business of engaging in motor vehicle interstate transportation for hire, no issue of unreasonable burden on interstate commerce is presented, *Bode v. Barrett*, 344 U.S. 585, and hence the decisions in *Spector Motor Service v. O'Conner*, 340 U:S. 602, and *Railway Express Agency v. Virginia*, 347 U.S. 359 are not in point. The taxable incidence of the registration fee in *each* state being based upon the privilege of the use of the highways of *each* state, there can be no multiple tax burden on interstate commerce as held in *Michigan-Wisconsin Pipeline Co. v. Calvert*, 347 U.S. 157.

(2) Since the reciprocal agreement between the States of Texas and Mississippi is not a compact or treaty comprehended by Article I, Section 10, Clause 3 of the Constitution of the United States, no Federal question is presented.

In the second question presented for review petitioner contends that the reciprocal motor vehicle

registration agreement between the States of Texas and Mississippi (Appendix "C", Petition for Certiorari, p. 59), is a compact or treaty formally entered into between the states which should be construed under the principles of international law or conflict of laws. In support of this contention petitioner relies principally upon *Virginia v. Tennessee*, 148 U.S. 518, which decision is based upon the interpretation that an "agreement" between the states has the same effect as a "compact" or "treaty" between the states under Article I, Section 10, Clause 3 of the Constitution of the United States.

However, petitioner concedes that truck reciprocity agreements such as are involved herein have "never been thought to violate the compact clause of Article I, Section 10 of the Constitution", *Bode v. Barrett*, 344 U.S. 586.[3] Nor does the correctness of the decision of the court below depend upon the existence of the reciprocity agreement which is to be interpreted in the light of the state statutes and not by the principles of international law or conflict of laws, *Kane v. New Jersey*, 242 U.S. 168. Hence, no Federal question is presented for determination by this Court.

Petitioner's additional contention that Section 16, Article 6675a, V.T.C.S., nullifies all other sections

---

[3] *Dixie Wholesale Grocery, Inc. v. Martin*, 278 Ky. 705, 129 S.W.2d 181, 184 (Ky. Court of Appeals, 1939); *Duncan v. Smith*, 262 S.W.2d 373, 377 (Ky. Court of Appeals 1953); *State v. Lauridsen*, 312 S.W.2d 140, 143 (Mo. Supreme Court, 1958); *Bode v. Barrett*, 412 Ill. 204, 106 NE.2d 521, aff. *Bode v. Barrett*, 344 U.S. 583.

and provisions of Article 6675a, is without merit, since Section 16(b), Article 6675a, specifically provides that Section 16 shall be "cumulative" of all other laws. It therefore cannot be contended seriously that in using the word "cumulative" the Legislature intended to repeal, revoke, and "void" all of the other provisions of Article 6675a-1 to 6675a-15, inclusive.

In this connection the attention of the Court is respectfully directed to Paragraph XII of the reciprocity agreement (Appendix "C", Petition for Certiorari, p. 62), providing for the modification or cancellation of the agreement by either party upon thirty days written notice, and further providing that the agreement shall remain at all times subject to any alterations or modifications which may be made by legislative enactment in either state. Manifestly, where an agreement may be terminated upon thirty days written notice by either party thereto *without cause*, and the terms of which are subject to alteration or modification by the Legislature of either state party thereto, such agreement cannot be dignified as a "treaty" or a "compact" which is subject to international law as contemplated by the cases cited by petitioner.

CONCLUSION

Since there is no substantial Federal question presented for review which has not already been determined heretofore, or which has not been decided in accordance with the applicable decisions

of this Court, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

WILL WILSON
Attorney General of Texas

C. K. RICHARDS
Assistant Attorney General of Texas
Capitol Station
Austin 11, Texas

Attorneys for Respondent,
State Highway Commission of Texas

Certificate of Service

I, C. K. Richards, Assistant Attorney General of Texas, am a member of the Bar of the Supreme Court of the United States, and I now enter my appearance in the Supreme Court of the United States in the above captioned cause in behalf of respondent. I do further certify that copies of the foregoing brief have been forwarded by United States Air Mail, postage prepaid, to petitioner's attorneys, M. Ward Bailey and T. S. Christopher, 807 Continental Life Building, Fort Worth 2, Texas.

C. K. Richards
Assistant Attorney General of Texas